- 4. Service of the Accusation was effective as a matter of law under Government Code section 11505, subdivision (c) and/or Business and Professions Code section 124.
  - 5. Government Code section 11506 states, in pertinent part:
  - (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.
- 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3679.
  - 7. California Government Code section 11520 states, in pertinent part:
  - (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.
- 8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 3679, finds that the charges and allegations in Accusation No. 3679, are separately and severally, found to be true and correct by clear and convincing evidence.
- 9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$1,800.00 as of February 11, 2011.

### **DETERMINATION OF ISSUES**

- 1. Based on the foregoing findings of fact, Respondent Michelle Charlene Sapida has subjected her Pharmacy Technician License No. TCH 91564 to discipline.
  - 2. The agency has jurisdiction to adjudicate this case by default.

Exhibit A: Accusation

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Exhibit A

Accusation

1 2 3 4 5 6	EDMUND G. BROWN JR. Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General JOSHUA A. ROOM Deputy Attorney General State Bar No. 214663 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-1299 Facsimile: (415) 703-5480 Attorneys for Complainant  BEFORI	
8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
9	STATE OF CALIFORNIA	
10	In the Matter of the Accusation Against:	Case No. 3679
11	MICHELLE CHARLENE SAPIDA	
12	444 Moorland Street Vallejo, CA 94589	ACCUSATION
13	Pharmacy Technician License No. TCH 91564	
15	Respondent.	
16	Complainant alleges:	
17	Complandati diregeo.	
18	PARTIES	
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity	
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
21	2. On or about August 11, 2009, the Board of Pharmacy issued Pharmacy Technician	
22	License No. TCH 91564 to Michelle Charlene Sapida (Respondent). The Pharmacy Technician	
23	License was in full force and effect at all times relevant to the charges brought herein and will	
24	expire on July 31, 2011, unless renewed.	
25	<u>JURISDICTION</u>	
26	3. This Accusation is brought before the Board of Pharmacy (Board), Department of	
27	Consumer Affairs, under the authority of the following laws. All section references are to the	
28	Business and Professions Code (Code) unless otherwise indicated.	

- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

#### STATUTORY AND REGULATORY PROVISIONS

- 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:
- (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- 8. California Code of Regulations, title 16, section 1770, provides that a crime or act is substantially related to the qualifications, functions or duties of a licensee if to a substantial degree it evidences present or potential unfitness to perform the functions authorized by the license or registration in a manner consistent with the public health, safety, or welfare.
- 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

## FACTUAL BACKGROUND

- 10. On or about February 6, 2009, without consent to do so, Respondent used a name and personal information including social security number belonging to another person to fraudulently open up a new cellular telephone account with Sprint. Respondent used the account until it was closed by Sprint on or about June 29, 2009 with a delinquent balance of \$338.47.
- 11. On or about November 20, 2009, based on the events described in paragraph 10, in a criminal case titled *People v. Michelle Charlene Sapida*, Case No. FCR271967 in Solano County Superior Court, Respondent was charged by Misdemeanor Complaint with violating Penal Code section 530.5(a) (Identify theft), a misdemeanor.
- 12. On or about December 29, 2009, Respondent signed a Diversion Agreement in Case No. FCR271967 for pre-trial District Attorney Diversion agreeing, among other things, to enroll in a Diversion Class administered by the District Attorney, and to pay restitution of \$338.47 to the victim, both within six months. Further proceedings in the case were suspended and a hearing was set for June 29, 2010 to consider the case for possible dismissal.
- 13. On or about June 29, 2010, Respondent was again ordered to enroll in the Diversion Class and to pay restitution. A further hearing was set for December 17, 2010.

#### FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

14. Respondent is subject to discipline under section 4301(f) of the Code, in that Respondent, as described in paragraph 10 above, committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

# SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

15. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 10 to 14 above, engaged in unprofessional conduct.

#### **PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

- 1. Revoking or suspending Pharmacy Technician License No. TCH 91564, issued to Michelle Charlene Sapida (Respondent);
- 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
  - 3. Taking such other and further action as isdeemed necessary and proper.

DATED: 9/23/10

VIRGINIA HEROLD Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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